

1 I. NEEL CHATTERJEE (State Bar No. 173985)  
2 ORRICK, HERRINGTON & SUTCLIFFE LLP  
3 1000 Marsh Road  
4 Menlo Park, CA 94025  
5 Telephone: 650-614-7400  
6 Facsimile: 650-614-7401

7 JAMES N. KRAMER (State Bar No. 154709)  
8 CHRISTIAN N. BROWN (State Bar No. 233147)  
9 ORRICK, HERRINGTON & SUTCLIFFE LLP  
10 The Orrick Building  
11 405 Howard Street  
12 San Francisco, CA 94105  
13 Telephone: 415-773-5700  
14 Facsimile: 415-773-5759

15 Attorneys for Plaintiff  
16 DUKE ADVANTAGE, LLC

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 DUKE ADVANTAGE, LLC, a company,

21 Plaintiff,

22 v.

23 CORMATRIX CARDIOVASCULAR, INC.,  
24 a corporation, ROBERT G. MATHENY, an  
25 individual, DAVID B. CAMP, an individual,  
26 and BEECHER LEWIS, an individual,

27 Defendants.

CASE NO. C-07-2950 RMW

**DECLARATION OF ROBERT  
LADUCA IN SUPPORT OF  
PLAINTIFF DUKE ADVANTAGE'S  
OPPOSITION TO MOTION TO  
DISMISS FOR IMPROPER VENUE**

Date: August 3, 2007  
Time: 9:00  
Courtroom: 6  
Judge: Hon. Ronald M. Whyte

28 I, ROBERT LADUCA, declare:

1. I am a member of Duke Advantage, LLC, the plaintiff in this action, and  
am a resident of the State of California. I have personal knowledge of the facts stated herein, and  
if called as a witness, I could and would testify competently thereto, under oath.

2. I make this declaration in support of Plaintiff Duke Advantage's  
Opposition to Defendants' Motion to Dismiss for Improper Venue.

3. Plaintiff Duke Advantage, LLC is a limited liability company of which I

1 am a member. I am, and was at all times relevant to this lawsuit, a resident of Santa Cruz,  
2 California. Duke Advantage's principal place of business is located at 2829 Mission Street, in  
3 Santa Cruz, California. I am a medical device inventor, and hold eight issued patents and a  
4 number of patent applications related to medical stents, stent grafts, and other medical devices.

5 4. In June of 2003, I met with Robert G. Matheny ("Matheny"), the founder  
6 and Chief Scientific Officer of Defendant CorMatrix, in San Francisco. Matheny and I discussed  
7 the technology CorMatrix was developing, and I offered suggestions for possible uses of  
8 CorMatrix's technology, including its potential for use as a covering on a medical stent grafts and  
9 other medical devices. In February of 2004, CorMatrix was in need of additional investment to  
10 cover the expense of a license payment. Defendants contacted me in Santa Cruz, California via  
11 telephone to inquire whether I was interested in purchasing shares of CorMatrix stock. After  
12 expressing interest, I negotiated the terms of an investment with Matheny and other CorMatrix  
13 executives via telephone, email and facsimile from my office and residence in Santa Cruz,  
14 California.

15 5. Ultimately, the Defendants and I agreed that in exchange for a \$350,000  
16 investment in CorMatrix, CorMatrix would cause 25,161 shares of its common stock to be issued  
17 to Duke Advantage, and Duke Advantage would be provided with representation on CorMatrix's  
18 Board of Directors and an active role in overseeing the company's strategy and operations.  
19 Defendants represented that I would be given a seat on the company's board as Duke  
20 Advantage's representative, but I was never invited to attend any board meetings. When it  
21 became clear that the Defendants never intended to live up to their promises, and subsequently  
22 took a litigious stance towards myself and another company that I hold an ownership interest in,  
23 Duke Advantage filed the present Complaint.

24 6. In connection with Duke Advantage's investment, on February 9, 2004 the  
25 Defendants faxed me a stock purchase agreement (entitled "Subscription Agreement") governing  
26 the terms of Duke Advantage's purchase of CorMatrix stock. The Subscription Agreement was  
27 not the result of any negotiations between myself and the Defendants – it was simply sent to me  
28 for my signature. When I received the Subscription Agreement, it had not been filled out to

1 include the specifics of Duke Advantage's investment. Attached hereto as **Exhibit A** is a true and  
2 correct copy of a facsimile I received from CorMatrix's Chief Financial Officer, John Thomas  
3 ("Thomas"), attaching a copy of the Subscription Agreement for execution by Duke Advantage,  
4 as well as inadvertently attaching a copy of the stock purchase agreement between Purdue  
5 Research Foundation and CorMatrix. In the third paragraph of the cover sheet of the facsimile,  
6 Thomas states, "[a]lso attached is the stockholder's agreement related to Purdue which you by  
7 becoming a shareholder of CorMatrix become a party to as well."

8           7. Thomas faxed the Stockholder's Agreement to Duke Advantage's counsel,  
9 Linsey White, on February 10, 2004. There are inconsistent choice of law and choice of forum  
10 provisions in the Subscription Agreement and the Stockholder's Agreement. Attached hereto as  
11 **Exhibit B** is a true and correct copy of the Stockholder's Agreement faxed to Duke Advantage's  
12 counsel on February 10, 2004, and signed by myself on behalf of Duke Advantage.

13           8. I am aware that the Defendants have extensive ties to California.  
14 CorMatrix carries out its operations and has an office in Sunnyvale, California. The California  
15 address for this facility is the only one listed on CorMatrix's website (<http://www.cormatrix.com>)  
16 as of the date of this declaration. Before moving to the Sunnyvale facility, CorMatrix ran its  
17 operations out of facilities in Santa Cruz, California. The individual defendants traveled  
18 approximately six times each year to California to solicit additional investors, attend conferences,  
19 observe its CorMatrix's operations, meet with medical professionals, and promote CorMatrix's  
20 products.

21           9. The Defendants' only connections to Georgia are that CorMatrix is  
22 incorporated in that state, and two of the three CorMatrix executives named in this lawsuit have  
23 their personal residences in Georgia. In fact, the corporate address of CorMatrix is the home  
24 address for CorMatrix's CEO, David Camp. I am not aware that CorMatrix has any non-  
25 executive employees working for it in Georgia.

26           10. Duke Advantage has no connections with Georgia other than through its  
27 investment in CorMatrix, which was solicited by the Defendants in California. I have only been  
28 to Georgia twice in connection with Duke Advantage business, once to attend a shareholders

1 meeting in late 2006, and again after this litigation commenced to attend another shareholder's  
2 meeting in June of this year. Duke Advantage does not carry out any activities in Georgia, and I  
3 have no plans to travel to Georgia in the future in connection with any Duke Advantage business.

4 I declare under penalty of perjury under the laws of the United States that the  
5 foregoing is true and correct. Executed on July 13, 2007, at Santa Cruz, California.

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9 ROBERT LADUCA  
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